

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

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FOR COURT USE ONLY

☐ Individual appearing without attorney
☒ Attorney for: Desert Springs Financial LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION

In re:
Desert Springs Financial, LLC

CASE NO.: 6:16-bk-14859-MW

CHAPTER: 11

AMENDED
NOTICE OF SALE OF ESTATE PROPERTY

Debtor(s).

Sale Date: 02/21/2017

Time: 2:00 pm

Location: US Bankruptcy Ct, Central Dist of California, Riverside Div., Crtrm 6C, 411 West 4th Street, Santa Ana, CA

Type of Sale: ☐ Public ☒ Private

Last date to file objections: 02/07/2017

Description of property to be sold: Commercial Building and parking area - currently a Bowling Alley
Real property located at 68051 Ramon Road, Cathedral City, Ca 92234, APN 680-190-034 ("Bowling") subject to the lease of the property and 57% interest in the Parking Area parcel (APN 680-190-036) per CCRs of said parcel free and clear of all liens, claims, encumbrances, and interests, subject to the leasehold interests of "Ramon Palm Lane, Inc."

Terms and conditions of sale: Property is being sold to the highest qualified bidder appearing at the hearing
Please see attached Purchase terms and Conditions

Proposed sale price: \$ 4,300,000.00

Overbid procedure (if any): Deadline to submit bids 2/18/2017/ Please see attached proposed bidding procedures
See Overbid Procedure Attachment for overbid procedures.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

February 21, 2017 at 9:00 a.m. subject to the court's calendar in United States Bankruptcy Court, Central District of California, Riverside Division Courtroom 6C, located at 411 West 4th Street, Santa Ana, CA

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Mike Radlovic
Senior Vice President
mradlovic@cbcsocalgroup.com
Cell: 310.429.2278
Fax: 951.293.3147
Coldwell Banker Commercial-SC
3998 Inland Empire Blvd. Suite 400
Ontario, CA 91764

Date: 01/31/2017

Purchase Terms and Conditions Attachment

- a. The Buyer is Palm Springs Financial Group, LLC.,
- b. Purchase Price: \$4,300,000.00
- c. Down Payment \$500,000.00
- d. New Loan \$2,300,000.00
- e. Purchase Money Note to Seller \$1,500,000
 - 1. Monthly interest-only payments @ 5% per annum
 - 2. Paid in full within 30 months of close of escrow
 - 3. If property is sold prior to 30 months, DSF to receive unpaid principle and accrued interest on Note plus 25% of net difference between purchase price and new sale price after costs of sale or \$250,000.00, whichever is less.

OVERBID PROCEDURE ATTACHMENT

The Debtor proposes the Bid Procedures as set forth below for the **Bowling property**:

- **Introduction:**

The Debtor is selling 3 of the 4 parcels of real property owned by Debtor to pay secured creditors and reorganize. The subject of this overbid auction is the parcel described as the Bowling property including 57% interest in the adjacent Parking Area and the Debtor's interest in the existing lease of the property. The auction is to be conducted under the auspices of the U.S. Bankruptcy Court for the Central District of California in open court on February 21, 2017, at 9:00 a.m.

Debtor and the Proposed Purchaser, Palm Springs Financial Group, LLC., (PSFG) entered a Purchase and Sale Agreement, a copy of which is attached as Exhibit "C". Debtor is seeking approval of the offer and of PSFG as the "stalking horse" bid and "the stalking horse" bidder, respectively, in connection with the Debtor's solicitation of higher and better offers for the asset. The opening bid of PSFG is \$4,300,000.00 comprised of down payment of \$500,000.00, cash in the amount of \$2,300,000.00 and financing by seller in the amount of \$1,500,000.00. The Proposed Purchaser is ready to close escrow within 7 calendar days of court approval.

- **What is being sold:** The "Bowling" property. Located at 68051 Ramon Road, Cathedral City, CA, is comprised of an approximately 25,000 sq. foot commercial building currently being used and operated as a bowling alley known as Palm Springs Lanes, operated by Ramon Palm Lane, Inc. under lease effective September 1, 2008 to September 30, 2023. (Exhibit "B"). The purchase of the Bowling property includes purchase and transfer of Lessor's rights and obligations under the lease. It also includes a 57% interest in the adjoining Parking Area parcel. PSFG entered the above-mentioned purchase agreement with debtor after due diligence and with knowledge of the history of marketing this property and the Towers property as well as the history of the litigation between the tenant and the debtor. Exhibit

Any overbidder must execute a purchase agreement for cash of at least \$2,900,000 and seller financing of not more than \$1,500,000.00.

- **Time line:**

1. Qualified bids must be received by the Debtor and/or broker for the Debtor no later than midnight, February 18, 2017 as set forth below. Electronic transmission of any such offer to the Debtor's broker at the same time is acceptable. "Qualified Bid" is described below.

2. If qualified bids are received, the auction for this asset will take place in open court on February 21, 2017, at 9:00 a.m. The Debtor shall advise the Court concerning the salient terms of all qualified bids and which offer, in the Debtor's opinion, is the highest and best offer. The determination of which offer is the highest and best offer will be based on factors such as the amount of the bid, the ability of the qualified bidder to perform and the ability of the qualified bidder to close the transaction quickly.

3. Following the auction and the Court's determination of whom the successful bidder is, the successful bidder must be prepared to fully perform and close within 7 calendar days of the date the Court designates the successful bidder in open court.

4. Other than PSFG, no breakup fee shall be paid to any bidder, qualified or otherwise in connection with the sale of the Debtor's assets. All bidders shall bear their own costs.

As to PSFG, because it is the initial bidder, and in the event it is not the high bidder, it shall be entitled to a breakup fee of \$50,000, which shall be paid at the close of escrow if PSFG is not the successful purchaser unless it bids higher than another overbidder but does not become the successful purchaser.

- **The overbid purchase offer:**

The purchase offer ("overbid") for the Bowling property must be all cash, or cash and contingency-free financing of at least \$4,400,000.00. The bid may include up to \$1,500,000.00 of seller financing. Any successive higher bids must be in \$50,000.00 increments or in other amount as set by the court, and, must be a "Qualified Bid".

- **Qualified Bid.**

To be a qualified bid, all the following requirements must be met unless waived by the Debtor or by the Court:

The prospective overbidder must complete all due diligence inspections of the property prior to submission of its contingency-free bid no later than February 18, 2017.

The bid must be in writing and submitted to counsel for the Debtor by email, by U.S. Mail, or by messenger as follows:

ORROCK, POPKA, FORTINO, TUCKER & DOLEN
1710 Plum Lane, Suite A
Redlands, CA 92374-0100
tucker@waynetuckerlaw.com

and a copy must be delivered concurrently to Debtor's broker by email by U.S. Mail, by messenger, or by facsimile as follows:

Mike Radlovic
Senior Vice President
mradlovic@cbcsocalgroup.com
Cell: 310.429.2278
Fax: 951.293.3147
CalBRE# 00665020
Coldwell Banker Commercial-SC
3998 and Empire Blvd. Suite 400
Ontario, CA 91764

The bid must be signed by the qualified bidder or its principal and must acknowledge the bidder read and understood the “**Disclosure re lease**” contained in the Notice of Sale and this motion.

The bid must be submitted to and received by Debtor’s broker on or before midnight, February 18, 2017, local time.

The bid must be an offer to pay money in U.S. funds.

The bid may not be a conditional bid with the exception of a financing commitment as to which the qualified bidder must be prepared to close within 7 calendar days after the date the Court designates the successful bidder in open court.

When the proposed purchase overbid is submitted, it must be accompanied by admissible evidence in the form of affidavits or declarations establishing that the bidder is capable and qualified, financially, legally, and otherwise, of unconditionally performing all obligations under the agreement. Any overbidder must execute a purchase agreement for cash of at least \$2,900,000 and seller financing of not more than \$1,500,000.00.

The admissible evidence of financial ability will be on a need to know basis with the financial information only being available to the Debtor’s broker, to the Debtor’s counsel, and to the Court, if the Court determines it needs to review such financial information. Debtor’s counsel and broker shall keep such information confidential. The sufficiency and acceptability of a proposed qualified bidder’s purchase offer and all accompanying evidence provided shall be determined at the sole discretion of Debtor.

The overbid, when submitted to Debtor’s counsel and/or broker, must be accompanied by an earnest money deposit of \$490,000.00 in the form of a cashier’s check made payable to the Trust account of Orrock, Popka, Fortino, Tucker & Dolen or into an escrow account designated by Debtor. The amount shall be non-refundable if the bid is determined by the Court to be the highest and best bid for the property and if the successful bidder does not close within 7 calendar days of the date the Court approves the sale to the successful bidder in open court. Where an entity is entitled to a credit bid exceeding \$490,000.00, the requirement of the \$490,000 up-front monies may be waived.

Any unsuccessful bidder shall receive a return of its deposit in full following the entry of a Court Order approving the sale to another bidder.

Any person or entity that submits a timely, qualifying overbid shall be deemed a “Qualified Bidder” and may bid at the hearing. Unless otherwise approved by the Debtor, and permitted by the Court, any entity that fails to submit a timely, qualifying overbid, as set forth above, shall be disqualified from bidding for the property.

For a bidder to be eligible for a good faith finding under 11 U.S.C. §363(m), the bid should also include all factual statements and evidence necessary for the Court to make a finding of good faith under such Bankruptcy Code section.

The Court will determine the best bid ("the Successful Bidder"). The Successful Bidder must pay at closing all amounts reflected in the overbid in addition to all accompanying closing costs as necessary to purchase the property.

PSFG is deemed to be a qualified bidder for purposes of bidding and overbidding.

- **Credit Bidding.**

Secured creditors Yun Hei Shin, Ramon Palm Lane, Inc., and Yun Hei Shin (RPL/Shin) shall be entitled to credit bid in the amount of their allowed secured claim(s).

- **Identity of the Bidder.**

All bids, other than the bid of PSFG, must include a separate statement, signed under oath, addressing satisfactorily to the Debtor (i) the identity of the bidder (and any designees), (ii) any connections of bidder/designee with the Debtor or Debtor's insiders, (iii) reassurance that there are no contingencies to the bid other than the auction, (iv) reassurance that the bidder, if the successful bidder, will promptly proceed to close the transaction within 7 calendar days of approval of the bidder's bid in open court and (v) reassurance that all authorizations required (e.g., board approval, etc.), if any, have been secured, (vi) that a bidder is an insider by the fact of family relationship and/or a financial relationship. However, the fact of any such relationship must be disclosed in bids.

- **No Auction.**

If the Debtor does not receive any timely qualified bids from a qualified bidder, PSFG will be the successful bidder and \$4,300,000.00 will be the amount of the successful bid subject to final approval of the court.

- **Auction.**

If the Debtor timely receives a qualified overbid from a qualified bidder, an auction will take place in open Court, or depending on the Court's calendar, in the courthouse but outside the courtroom at 411 W 4th Street, Santa Ana, CA, on February 21, 2017, beginning at 9:00 a.m. The first over-bid shall be \$4,400,000. All subsequent overbids must be in minimum increments of at least \$50,000.00. Only qualified bidders who timely submitted qualified bids may bid at the auction. Qualified bidders must satisfy the requirements of ability to perform on subsequent overbids and provide proof of ability to perform above \$4,400,000 to bid higher.

Subject to other direction by the Court, all qualified bidders and their brokers, attorneys and agents are required to remain in the courtroom during the entire auction and bidding process.

- **Highest and Best Bid.**

The determination of which bid is the highest and best bid shall be determined by the Court.

The Debtor may select the second highest and best bid as the backup bid. Any unsuccessful bidder cannot be selected as a backup bidder without its express consent. The monies for bidders who are not selected as the highest and best bid or as the backup bid shall be returned to such bidders by Debtor's counsel promptly following the auction. The cashier's check(s) for the backup bidder shall be returned promptly after the transaction between the Debtor and the successful bidder have closed.

- **Good Faith Finding.**

PSFG shall be deemed a good-faith purchaser under the Bankruptcy Code unless otherwise ordered by the Bankruptcy Court.

To the extent applicable and as determined by the Court, the successful bidder shall be deemed a good faith purchaser pursuant to 11 U.S.C. § 363(m) and any stay of the order approving the sale of the Debtor's asset under the Federal Rules of Bankruptcy Procedure is waived.

Any qualified bidder seeking a good faith finding must be prepared to timely submit proof to support such a finding.

- **Successful Bidder's Obligation.**

The successful bidder shall be obligated to purchase the asset and to promptly pay all monies then owed to the Debtor as set forth in the pending Order Approving Sale. The failure to pay all monies bid by February 28, 2017, after the designation in open court of the bidder as the successful bidder (or the failure of the backup bidder to perform and to pay all monies owed by February 28, 2017, after the Debtor informs the backup bidder that it has to February 28, 2017 to perform) shall constitute a default under the terms of the auction and the Debtor shall be entitled, at its election, to retain the deposit and to offer the asset to the back-up bidder instead. In the event the back-up bidder fails to perform, then the Debtor may retain the deposit provided by the back-up bidder.

The successful bidder and the back-up bidder must cooperate as necessary and provide the necessary information, testimony and/or declarations to fully consummate the transaction.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1710 Plum Lane, Suite A, Redlands, CA 92374

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF SALE** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **January 31, 2017**, the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Andrew S Bisom** abisom@bisomlaw.com
- **Steven R Fox** emails@foxlaw.com
- **Kathleen P March** kmarch@bkylawfirm.com, kmarch3@sbcglobal.net
- **Thomas J Polis** tom@polis-law.com, paralegal@polis-law.com
- **Jason K Schrader** jason.K.Schrader@usdoj.gov
- **Mohammad Tehrani** Mohammad.V.Tehrani@usdoj.gov
- **M Wayne Tucker** tucker@waynetuckerlaw.com,
opftdecfmail@gmail.com;opftdlaw@gmail.com;hazel@waynetuckerlaw.com
- **Todd L Turoci** mail@theturocifirm.com
- **United States Trustee (RS)** ustpreion16.rs.ecf@usdoj.gov

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) **February 1, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **February 1, 2017**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Yun Hei Shin, Ramon Palm Lane, Kathleen P March kmarch@bkylawfirm.com, kmarch3@sbcglobal.net

Pacific Premier Bank, Thomas J Polis ecf@polis-law.com, paralegal@polis-law.com

J&K Drywall and Metal Stud Framing, Inc. fax #(909)-887-6965

Kevin Sarkisyan, Palm Springs Financial Group, LLC kevin@sarkisyan.com

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.